**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is not approved for reporting.)

(Chapter VIII 32 (2) (b)

Description of the case.

W.P. No. 815/05 (M.S)

Mohd. Naushad & others

Vs.

State

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 25.04.06

Initial of Judge

**IN THE HIGH COURT UTTARANCHAL AT NAINITAL**

**WRIT PETITION NO.815 (MB) OF 2005**

1. Mohd. Naushad Hussain,
   S/o Sri Abrar Hussain,
   R/o Mohalla Buchar Khana,
   Tallital Nainital.
2. Mohd. Shahid Hussain,
   S/o Sri Abrar Hussain,
   R/o Mohalla Buchar Khana,
   Tallital, Nainital. .....Petitioner.

Versus

1. State of Uttaranchal through District Magistrate, Nainital.
2. Nagar Palika Parishad, Nainital, through its Executive Officer, Nainital, District-Nainital.
3. Chairman Nagar Palika Parishad, Nainital, District-Nainital.
4. Rickshaw Puller Welfare Committee, Nainital, through its Secretary. ..... Respondents.

***Mr. M.C. Kandpal, Sr. Advocate assisted by Sri Kurban Ali and Sri S.S. Chaudhary, Advocate for the petitioners.***
***Learned Standing Counsel for the respondents.***

**Dated: 25.04.2006**

**Hon'ble Rajesh Tandon, J.**

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 05.07.2005 passed by the respondent no.3 (Annexure No. 11 to the writ petition). Further prayer has been made for a writ of mandamus commanding & directing the respondents authorities to renew the license of the rickshaw no. 64 in

favour of the petitioner and cancel the license of rickshaw no. 64 allotted in favour of Rickshaw Puller Welfare Society.

Briefly stated, before proceeding with the facts of the case, it may be stated that it is the plight of the poor persons, who have been pulling the rickshaw in the Nainital area since long and is the only source of livelihood for them, who are in the profession of Rickshaw pulling. Real human labour reflects by plying the rickshaw.

From the year, 1996 up to 2000, the licence for rickshaw no. 64 was issued in favour of one Mr. Manoj Kumar and according to the case of the petitioner the same continued up to 31st March, 2005. As will appear from paragraph 4 of the counter affidavit, where this fact has been admitted that the petitioner no. 2 was pulling the rickshaw and lastly renewal was made from 4th April, 2004 upto 31st March, 2005.

According top the case of the petitioner, an application was filed by the petitioner no. 2 before the Chairman Nagar Palika Parishad Nainital on 24th April, 2005 for transferring the licence of Rickshaw No. 64 in favour of his real elder brother Sri Naushad Hussain, who is petitioner no.1 in the present case. The said application was filed along with the affidavit before the Executive Officer Nagar Palika Parishad on 21st May, 2005 giving on objection for transferring licence of Rickshaw No. 64 in favour of the petitioner no.1. The Municipal Board has rejected the said application and the renewal was not made either in favour of the petitioner no. 1 or petitioner no. 2. and the period of licence expired in the year, 2005.

However, the petitioner no. 2 preferred an appeal under Section 9 before the Chairman, Nagar Palika Parishad Nainital against the order-dated 27.05.2005 passed by the respondent no. 2. By recording an evidence that there cannot be any transfer of licence, it appears it has been allotted to some other person.

A writ petition was preferred being Writ Petition No. 646 of 2006 against the said illegal grant before this Court. The Division Bench was of the opinion that the prayer for the transfer of the licence cannot be entertained as there is no licence in existence in the name of original licensee i.e. Licence No. 64. Following directions were made by the Division Bench:-

*"4. Hence, the writ petition is disposed of with the following directions:-*

*i. The third respondent is directed to consider anjd dispose of Annexue 7 Appeal dated 30.05.2005 filed by the first petitioner as expeditiously as possible and at any rate, within a period of 10 days from today.*

*ii. If the first petitioner's appeal is allowed and the license is granted in favour of the first petitioner for the year 2005-2006, the applications submitted by the petitioners for transfer of the license in favour of he second petitioner shall be considered and appropriate orders shall be passed by the second respondent in accordance with the Rules within two weeks of the disposal of the appeal by the third respondent.*

*iii. The allotment of Rikshaw No. 64 in favour of the Rikshaw Puller Welfare Society will be subject to the decision of the third respondent in the appeal filed by first petitioner."*

The appeal has not been decided in pursuance of the order passed by this Court and the same was dismissed. The Chairman Nagar Palika Parishad Nainital was of the opinion that in accordance with the provision of Section 171 of the

U.P.Z.A. & L.R. Act the same cannot be transferred as the brother is not covered under the definition of the family.

Learned counsel for the petitioner has referred the own byelaws of the Nagar Paliak Parishad, where Clause 7 permits the transfer on a joint application. The said clause is quoted below:-

*"7. The licence specified in bye-law 2 shall be granted Subject to the following conditions:*

*[i] The licence shall not remain valid after the 31st March following the date of issue.*

*[ii] The rickshaw must be kept in good repairs.*

*[iii] The lamp of every rickshaw must be provided with the required amount of oil wicks or other illuminant before the rickshaw is let out to hire.*

*[iv] The licencee is responsible that the number affixed under bye-law 6 are maintained in good order.*

*[v] if any lost or unclimed property is found in any licenced rickshaw on its return from hire the licensee shall within 24 hours, if it is not sooner claimed by the owner thereof take it, or case it to be taken, to the Kotwali and deliver it, or cause it to be delivered, to the Police Officer in charge.*

*[vi] The licensee shall not:*

*[a] Without reasonable excuse refuse to let out his rickshaw to any person lawfully requiring the same, or refuse to accept the hire laid down by these bye-laws or demand a higher rate;*

*[b] Fail to produce his licence when it is demanded by a magistrate, member of the Board, Police Officer or employee of the Board especially empowered in this behalf.*

*[c] Upon the expiration or suspension or cancellation of his licence the licencee shall within 24 hours deliver up his licence to the licensing office.*

*[vii] The licensee shall not transfer his licence to any other person but a licence may be transferred on the joint application of he persons concerned to the licensing officer, who will made the necessary alteration in the licence on payment of a fee of Rs.2.50.P. The alteration in the licence shall be singed and dated by the licensing officer.*

*[viii] The licensee shall produce his rickshaw for inspection by the licensing officer at such times and places as the President, Vice-President, or the licensing officer may direct.*

*[ix] Every person licensed to propel a rickshaw shall wear while in charge of, or employed with, such licensed rickshaw, a brass badge on his arm bearing the number of his licence and shall be cleanly and decently clothed.*

*[x] No person who is the opinion of the licensing officer is two weak, and no person under 16 years of age shall be allowed to propel a rickshaw.*

*[xi] if the Licensing Officer considers that any driver or puller is not fit to drive a rickshaw or is ill continuously or his character and antecedents are unsatisfactory, or if any of the particular furnished in the application for driver's licence are subsequently found to be incorrect, the said officer may cancel or suspend the driving licence.*

*[xi][a] The licensing Officer may prohibit playing of cycle rickshaws on the Mall Road during such hours as may be specified by him to avoid inconvenience to pedestrian traffic."*

*[xii] Rickshaw when not let out on hire shall not be kept or placed on any public road except at the municipal*

*rickshaw stands to be fixed by the Board and no rickshaw shall be taken along any public road for the purpose of offering it for ire to passers by.*

*[xiii] no more than to person shall be carried in any rickshaw.*

*[xiv] When passing equestrians and let horses rickshaws must keep to the outside of the roads, as between themselves they shall observe the ordinary rule of the road.*

*[xv] No rickshaw shall be left standing on any narrow road so that any other rickshaw, dandy or other traffic cannot pass.*

*[xvi] Every rickshaw plying for hire shall be produced for disinfection before the sanitary inspector of the circle once a fortnight at dandy shed at the time and day fixed by the Medical Officer Health. A charge of 0.06 P will be made for every disinfection."*

Learned counsel for the Nagar Palika, however, has submitted that the said byelaws has been amended and instead of Rs. 2.50 paise has been enhanced to 250. Admittedly, therefore, e Clause 7 has been retained in the byelaws of the Nagar Palika Parishad. The said byelaws has been framed under Section 298 (2) of the U.P. Municipalities Act and it has been published under Section 301 (2) of the U.P. Municipalities Act know as byelaws for the regulation of Three Wheeler pulling rickshaw lying for hire within the Nainital Municipality. In the same byelaws, the Nagar Palika Parishad has also retained its power to withdraw the renewal if it has been let out to any person unauthorisedly or the same has been cancelled or suspended.

In view of the aforesaid conditions available within the powers of the byelaws of the Municipality Act, the order

passed by the authority concerned, cannot be allowed to sustain.

It may be pointed out that the Uttaranchal being a welfare state specially Nainital the Rickshaw Pullers are plying the rickshaw since long as these byelaws were framed in the year, 1992 and is still continuing.

I, therefore, come to the conclusion that Clause-7, which was inserted in the year, 1942 and is still in the statue book of the Municipal Board in the name of the byelaws only restricts the transfer without the permission and also creating third party interest without the permission of the Municipal Board.

However, as will appear from the aforesaid byelaws that it does not prohibits a joint application and the same can be permitted by the authorities of the Municipality Board taking into consideration that there is no camouflage in moving such an application after the authorities are satisfied that on the garb of the joint application the petitioner has no other of his own benefit.

The Municipal Board may permit the transfer by way of joint application in order to promote a social order for the promotion of welfare of the people.

Subject to the aforesaid, writ petition is allowed. The matter is sent back to the Chairman/Executive Officer to pass appropriate orders for grant of fresh licence in respect of the year, 2006-07 in accordance with the byelaws farmed under Section 298(2) of the U.P. Municipal Act.

Subject to the aforesaid observations, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

25.04.2006
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